

EXHIBIT 6

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

PRAMILA GARDNER, JEFF GLENNON,)
KAREN P. HOLLANDER, REBECCA)
NORDAN, MAGGIE O'BRIEN, TRACIE)
SNYDER, ANDREA STRONG, JANE)
WERMAN, Individually And On Behalf Of)
All Others Similarly,)

Case No. 08 CV 3555

PLAINTIFFS,)

v.)

WHIRLPOOL CORPORATION,)

DEFENDANT.)

AFFIDAVIT OF ANTHONY H. HARDAWAY

I, Anthony H. Hardaway, being duly sworn, state as follows:

1. I am employed by Whirlpool Corporation ("Whirlpool"), as Lead Engineer, Advance Chemistry Technology. I am over 21 years of age, of sound mind, and competent to testify. Except as otherwise stated, I have personal knowledge of the facts stated in this affidavit. If called as a witness, I could testify as to each of them.

2. In this affidavit I state facts in support of Whirlpool's motion to strike class allegations in this lawsuit.

3. Whirlpool manufactures front-loading washing machines for resale to consumers under the Whirlpool®, KitchenAid®, Maytag®, Kenmore Elite®, and Kenmore® brand names. The Kenmore Elite® and Kenmore®-brand front-loading washing machines are manufactured exclusively for Sears Holdings Corporation ("Sears") for resale to Sears' customers under Sears' private brand names. Whirlpool sells those front-loading washers to Sears without warranty, and Sears issues its own written warranty when Sears sells each new Kenmore Elite® or Kenmore® brand washer to a consumer or other customer. To protect the consumer against defects in materials or workmanship, Whirlpool issues a manufacturer's written warranty with each new Whirlpool®, KitchenAid®, Maytag®, and other "house brand" washing machine Whirlpool sells to its trade customers for resale to consumers.

4. Whirlpool washing machines are sold to, and resold by, thousands of Whirlpool "trade customers," which include nationwide retailers, regional retailers, local retailers, builders, contractors, and other distributors of Whirlpool appliances, in the 50 United States, the District

of Columbia, and elsewhere. Whirlpool sells a small minority of its washing machines directly to end-user consumers through Whirlpool's Employee Purchase Program, which allows Whirlpool employees and their family members to buy appliances at a discount, or through Whirlpool's VIP Program, which allows employees of Whirlpool's third-party vendors to buy appliances at a discount.

5. In early 2002, Whirlpool first began selling high-efficiency front-loading washing machines under the Whirlpool® brand name, with the model names Duet™ and Duet HT™. These washers are built on the same engineering platform, which is referred to internally by Whirlpool as the "Access platform."¹ I will refer to the Duet™ and Duet HT™ washers, collectively, as "Whirlpool Access washers."

6. All Access platform washers are nearly identical from an engineering standpoint. Although there are some functional differences among the Whirlpool Access models (*e.g.*, the Duet HT™ models have a heating element that allows the consumer to select a Sanitary Cycle that superheats the water to kill bacteria in clothing, which is a feature not present in the Duet™ models), most of the differences are aesthetic. Currently, the high-end Access washer models offer a steam sanitization option. This feature allows the consumer to select Sanitary Cycle performance for additional wash cycles.

7. In 2006, Whirlpool began selling a new, smaller-capacity, front-loading washer under the model names Duet Sport™ and Duet Sport HT™. These washers are built on the same engineering platform, which is referred to internally by Whirlpool as the "Horizon platform." I will refer to the Duet Sport™ and Duet Sport HT™ washers, collectively, as "Whirlpool Horizon washers."

8. All Horizon platform washers are nearly identical from an engineering standpoint. Like the Access washers, there are some functional differences among Whirlpool Horizon models (*e.g.*, the Duet Sport HT™ models have a heating element that allows the consumer to select a Sanitary Cycle that superheats the water to kill bacteria in clothing, which is a feature not present in the Duet Sport™ models), but most of the differences are aesthetic.

9. All clothes washers, of any make or model, provide cleaning through a combination of thermal energy (the hot water), mechanical energy (agitation or tumbling), and chemical energy (the detergent). A conventional washer uses a top-loading, deep-water wash basket that rotates an agitator on a vertical axis to create the mechanical wash action. Generally speaking, Whirlpool's full-size conventional washers use up to 42 gallons of water to wash a load of laundry, depending on the size of the load. The main energy consumption in a conventional washer is attributable to the hot water—namely, the energy that is required to heat up dozens of gallons of water to wash a single load of laundry.

10. Although the components that provide cleaning in all washers are present in the Whirlpool Access and Horizon washers—*i.e.*, thermal energy, mechanical energy, and chemical

¹ Whirlpool now manufactures the Access platform at its plant in Monterrey, Mexico, as well as at its plant in Schorndorf, Germany, but these washing machines are referred to internally as the "Sierra" or "Matador" platform respectively. The Access, Matador, and Sierra names are often used interchangeably.

energy—the cleaning equation does change. In contrast with a conventional washer, the Whirlpool Access and Horizon washers use much less water, use a wash basket that rotates on a horizontal axis to create a tumbling mechanical wash action, not agitation, and are designed to be used with a highly concentrated, low-sudsing or high-efficiency detergent (“HE detergent”) to offset the lower thermal energy and the reduced water level.

11. Whereas a full-size conventional washer deep-fills the wash basket with dozens of gallons of water, and uses an agitator to move the clothes through the water to wash and rinse a load of laundry, the Whirlpool Access and Horizon washers work in an entirely different way. The wash tub itself moves on a horizontal axis, causing the clothes to be repeatedly lifted out of the water and plunged back in. This design makes front-loading washers substantially more water-efficient than a conventional washer.

12. The Whirlpool Access and Horizon washers are energy-efficient compared to most conventional washers. This is in large part due to fact that a significant percentage of the energy used by any washing machine goes to heating the water, and the Access and Horizon washers use significantly less water than conventional washers. This is true even when the washers are operated on the Sanitary Cycle, which washes clothes in water as hot as 160 degrees Fahrenheit. Since the Whirlpool Access washers first launched in 2002, these washers consistently have received the Energy Star® rating from the United States Department of Energy, which rates energy efficiency in home appliances. Similarly, since the Whirlpool Horizon washers first launched in 2006, these washers consistently have received the Energy Star® rating. Based on the Access and Horizon washers’ water efficiency and energy efficiency, the typical consumer could save money on utility bills by using one of those washer models, rather than a conventional washer. Because the Access and Horizon washers are water and energy efficient, some state and local governments and utility companies have offered their residents substantial rebates on purchases of Access and Horizon washers, as well as other Energy Star®-rated washers, to provide an incentive for their residents to buy water-efficient or energy-efficient appliances.

13. The Whirlpool Access and Horizon washers’ mechanical wash motion differs from, and generally is gentler than, the mechanical wash motion of a conventional washer. The Access and Horizon washers are not based on the spinning of the agitator on a vertical axis that forces clothes through the water and which can stress and twist fabrics. Instead, Access and Horizon washers clean clothes by tumbling them in and out of the water, a gentler wash action.

14. Because the Whirlpool Access and Horizon washers are water efficient, they were designed for use with high-efficiency laundry detergent, not regular laundry detergent. HE detergents are designed to provide the necessary higher chemical concentration for cleaning without causing other problems in the washer. The use of a HE detergent is essential for achieving the best cleaning performance in a low-water wash system, like the Access and Horizon washers. All detergents have chemical cleaning agents called surfactants. Surfactants are positively charged, neutral, or negatively charged and draw soils and other particles on the clothing to the surfactant, binding those particles to the surfactants. Traditional detergents generally have both surfactants and additional cleaning ingredients, as well as color-protection ingredients, ingredients to keep fabric fibers strong to prevent pilling and breaking, and ingredients to suspend soils so the soils do not redeposit on the clothing. HE detergents have

these same ingredients (some in higher concentrations), along with suds suppressors, higher levels of soil-suspending agents, and dye inhibitors. The detergent manufacturers add suds suppressors to HE detergents to keep the detergent low-sudsing. That is because for a given type and quantity of any detergent, front-loading washers tend to create more suds than traditional washers due to a combination of the tumbling mechanical action, the lower water levels, and the recirculation of water. Contrary to popular belief, the chemical wash action performed by the detergent is not related to the amount of suds created by the detergent as it dissolves in the water. Since Whirlpool Access washers launched in 2002, Whirlpool has included a sample of HE detergent in these washers' packaging so as to encourage consumers to use this low-sudsing detergent and to obtain the best wash results the machine can provide.

15. During its spin cycles, the Whirlpool Access and Horizon washers can spin the wash basket at up to 1,200 and 1,100 revolutions per minute ("rpm"), respectively, which is faster than a conventional washer's spin speed of approximately 640 rpm. The faster spin cycles in Whirlpool Access and Horizon washers create greater centrifugal forces that pull more moisture out of fabrics compared to the slower spin cycle in a conventional washer. The lower moisture content in the clothing at the end of the Access and Horizon washer's wash cycles reduces the time and energy needed to dry that load. Thus, the Access and Horizon washers not only reduce the amount of energy that is needed to wash the clothes, but also reduce the amount of energy that is needed to dry the clothes. In addition, the reduced time in the dryer reduces the wear on fabrics. To accommodate the greater spin speed, Whirlpool uses a stainless steel wash basket because it is more durable than the porcelain basket used in most conventional washers, which eventually would crack at spin speeds of 800 rpm.

16. Consumers Union has published numerous articles discussing the relative benefits of high efficiency front- and top-loading washing machines and has identified the following benefits offered by high-efficiency, front-loading washing machines: "Best washing and largest capacity. Use least water and energy. High spin speeds reduce drying time. No risks of loads becoming unbalanced. Gentler and quieter than many top-loaders. Many are stackable." (See Ex. A.)

17. All washing machines, of any make or model, have always had the potential to develop some amount of mold-mildew after a period of use. In fact, in one field study that I conducted, more than 90% of conventional washing machines between two and 15 years of age, regardless of make or model, had developed fungal or bacterial colonies—usually, both—that were detectable to the unaided eye and that produced a noticeable sour odor. The fungal and bacterial colonies in conventional washers tend to accumulate in the same or similar parts of the machine as in front-loading washers (*e.g.*, the top part of the plastic outer tub that is splashed or rinsed infrequently with water). This is because all washing machines use water, generally are kept in a somewhat closed and damp environment, and the laundry that is put into them has a wide variety of organic materials in and on the fabrics, including various bacteria and fungi.

18. Modern energy-conserving and water-conserving washing machines, however, generally can promote noticeable mold-mildew more readily than older, less efficient washing machines unless the user takes certain simple steps to control it. This is because high-efficiency washing machines are more tightly sealed when the door or lid is closed, which prevents the machine from drying out between uses; high-efficiency machines use less water to wash laundry,

and thus there is less water to splash or rinse the interior surfaces of the machine; and high-efficiency washing machines enable consumers to wash delicate and brightly colored clothing in cold or lukewarm water that does not destroy bacteria or mold spores. Moreover, detergent and fabric softener residues do not dissolve as completely, and do not rinse out with the rinse or wash water, when the consumer uses the low-temperature wash cycles.

19. In addition, a consumer's use of too much detergent, particularly regular (*i.e.*, non-HE) detergent, in a high-efficiency washer like the Whirlpool Access and Horizon washers can cause oversudsing conditions, which in turn can lead to the development of noticeable mold and mild in the machine. Suds can trap the soils and later redeposit them on the internal washer surfaces, rather than allowing the soils to stay in suspension in the water and flush down the drain. Excessive suds also can float particulate soils and normal oily body soils up into areas of the washer, such as the upper portion of the plastic tub's walls, that receive only an occasional splashing of wash or rinse water during a regular wash cycle. There are no deep-water submersion fills in high-efficiency washers' regular wash cycles, and so these areas never experience submerged washes or rinses unless the consumer uses the Clean Washer cycle, which fills the tub with more water and splashes the water on the hard-to-reach surfaces. Thus, if high suds levels occur consistently over time, the soils, along with detergent and fabric softener residues and water minerals, may build up in the areas that receive only the occasional splashing of water. The residues eventually can form a film or coating over those washer surfaces and provide a medium in which bacteria and mold spores can feed and reproduce, which is known as a "biofilm." This is especially so because the soils that the washing process removes from clothing are often organic in nature (*e.g.*, dead skin cells, bodily oils (sebum), and the related bacteria, including the positive bacteria that help provide a protective coating on human hair and skin). In addition, normally occurring mold spores can make up a portion of the biofilm build-up. Thus, all washing machines operate in conditions that can lead to bacteria and mold growth: a warm, humid environment with low airflow, and readily available sources of food for bacteria and molds.

20. Biofilm production, like the normally occurring mildew on bathtub walls and grout, has been investigated by the washer industry for many years. Soils, detergent residues, water minerals, naturally occurring bacteria, and mold spores are industry challenges that have been worked on for more than 25 years. Although mold and bacteria can grow in all washing machines, not just high-efficiency machines, water and energy conservation designs can increase the occurrence of these problems if specific instructions are not followed. Biofilm problems can and do increase when the consumer uses regular detergents for a prolonged period or in insufficiently reduced portions, or uses excessive amounts of HE detergents, in a high-efficiency washer. Biofilm and associated odor problems can and do increase when the consumer does not leave the door cracked open in between uses of a high-efficiency washer. Biofilm and associated odor problems also can and do increase when the consumer does not use hot-water or high-temperature wash cycles, both because cold and warm water does not kill bacteria and fungi and because detergents and fabric softeners do not dissolve as completely in cold water as they do in hot water. Likewise, consumers using high-efficiency washers should run a monthly

maintenance or Clean Washer cycle, no clothing, and chlorine bleach or an Affresh™ tablet (a washer cleaner that helps to penetrate and remove biofilm and odor-causing residues).²

21. The fact that modern, high-efficiency washing machines generally can promote noticeable mold-mildew more readily than older, less efficient washing machines has been well-documented, as have the very simple steps that consumers can take to control it. For example, a February 2005 *Consumer Reports* article states that “[n]umerous readers have reported that their front-loading washers developed mold or a musty smell. Using chlorine bleach occasionally and leaving the door ajar should help.” (Ex. B.) The Soap and Detergent Association, working together with appliance experts, has published a brochure informing consumers of the relative benefits of HE detergents, as well as the risk that mold or mildew will develop in HE washers if HE detergent is not used. (Ex. C.) Similarly, *Good Housekeeping* and other consumer magazines have worked to educate consumers regarding the proper use and maintenance of high-efficiency front-loading washers. (E.g., Ex. D.)

22. Whirlpool’s website (www.whirlpool.com) includes information that is readily available to consumers concerning the potential for mold, mildew, and associated odors to develop in high-efficiency front-loading washers if regular (i.e., non-HE) detergent is used and if the washers are not properly cleaned and maintained, as well as the simple steps consumers can take to mitigate that risk. (Ex. E.)

23. Similar to Whirlpool, other manufacturers of high-efficiency front-loading washing machines have made public statements concerning the potential for bacteria and associated odors to develop in high-efficiency front-loading washers. For example, Bosch has instructed its front-loading washer customers as follows:

Washing machine smells

The use of predominantly low temperature washing programs can result in the build up of bacteria and undissolved detergents which can cause the appliance (and clean laundry) to smell. Overloading the machine can also contribute to this.

Run the machine with no laundry at 90 degrees to clear the drum of residues. If suds can be seen in the drum during this process the program should be repeated until only clean, clear water can be seen. To avoid the recurrence, run a 90 degree program monthly with half the normal amount of a whites, biological detergent.

(Ex. F.) Frigidaire, which is owned by Electrolux Home Products, instructs its customers:

Care and cleaning of washer.

- **Prompt removal of finished loads.**

Odors may develop if items are left in the washer too long. Remove the load from the washer at the end of the cycle.

² If the washer model does not have a Clean Washer cycle, Whirlpool recommends that that consumer run a Heavy Duty or Bulky cycle with hot water, no clothing, and chlorine bleach or an Affresh™ tablet.

...

- **Preventing odors.**

Dry around the tumble action washer's door opening, flexible gasket, and door glass to prevent odors.

- **Preventing moisture.**

Leave the lid/door/dispenser drawer open when the washer is not in use.

- **Removing odors.**

To remove odors, add one cup chlorine bleach to empty tub. Complete the Regular cycle using hot wash water and cold rinse water.

(Ex. G.) General Electric states on its website:

Washers – Odors in Tub

...

Washer odors are usually caused by leaving the washer lid closed when not in use. This does not allow air to circulate and dry out the moisture remaining in the tub area. The air and moisture mixture becomes stagnant and creates an odor. When washer is not in use, leaving the lid up/open for air circulation will prevent odor.

To get rid of odors inside of washer follow the steps listed below:

1. Fill the washer with hot water; set at regular speed and the longest wash cycle
2. Add 3/4 cup of a water softening additive which can be found in the laundry detergent aisle. (Baking soda can be substituted)
3. Allow washer to complete entire wash and rinse cycle.
4. If odor lingers, repeat entire process.

(Ex. H.)

24. There are a few washer cleaning products currently on the market that are formulated to prevent, eliminate, or reduce biofilm and mold-mildew in washing machines. Such products include Affresh[™], Oxy-Mold[™], Smelly Washer, Washer Genie[™], and Washer Magic. The marketing information associated with those products are sources of information available to consumers concerning the risk that biofilm and associated odor may develop in high-efficiency washing machines. (Ex. I.)

25. It is impossible to design and manufacture mass-produced appliances so that no percentage of them will require repair or service during the life of the product. This is especially

true with complex devices containing hundreds of components, like the washers at issue in this lawsuit. Attached as Exhibit J are copies of the cover page and pages 29-31 of the October 2005 issue of *Consumer Reports* magazine, which includes a chart on page 29 that “indicates the percentage of five-year-old products with and without a warranty that have ever been repaired or had a serious problem.” The chart shows repair rates of a wide range of appliances and other products, from digital personal computers to lawn mowers, and every product has some percentage of units that require repair. The same article states that 25% of all five-year-old washing machines, of any make and model, “have ever been repaired or had a serious problem.”

26. Despite this, Whirlpool’s design, testing, and manufacturing procedures for the Whirlpool Access and Horizon washers have ensured that the vast majority of washer owners have not experienced, and will not experience, any problem related to mold or mildew. Attached as Exhibit K are copies of the cover page and page 342 of *Consumer Reports* 2008 Buying Guide. Page 342 shows the results of a repair-history survey of approximately 148,000 consumers for various brands of front- and top-loading washing machines purchased between 2002 and 2006. The repair rates for front-loaders range between approximately 9% and approximately 19%, with Whirlpool-brand front loaders having only a 9% repair rate. The external and publicly available service data confirm what Whirlpool’s internal warranty data show: that is, the vast majority of Whirlpool Access and Horizon washer owners have not experienced and will not experience the noticeable mold-mildew and odor problems alleged by the plaintiffs in this case.

27. During the period 2002 through August 2005, Whirlpool issued a one-year full warranty on all components of the Whirlpool® Duet HT® and a lifetime limited warranty on the stainless steel wash drum. A true and correct copy of the written warranty issued with Whirlpool® Duet HT® washers during the period 2002 through August 2005 is attached to this affidavit as Exhibit L. For several years that warranty stated in pertinent part:

ONE-YEAR FULL WARRANTY

For one year from the date of purchase, when this washer is operated and maintained according to instructions attached to or furnished with the product, Whirlpool Corporation will pay for FSP® replacement parts and repair labor to correct defects in materials or workmanship. Service must be provided by a Whirlpool designated service company.

...

LIFETIME LIMITED WARRANTY ON STAINLESS STEEL WASH DRUM

For the lifetime of the washer, when this washer is operated and maintained according to instructions attached to or furnished with the product, Whirlpool Corporation will pay for FSP® replacement parts for the Stainless Steel wash drum if defective in materials or workmanship.

After August 2005, Whirlpool’s written warranty included only a one-year limited warranty on all parts of the Duet HT® washer, and there was no lifetime limited warranty on the stainless

steel wash drum. A true and correct copy of the written warranty issued with Duet HT[®] washers after August 2005 is attached as Exhibit M and states in pertinent part:

ONE YEAR LIMITED WARRANTY

For one year from the date of purchase, when this major appliance is operated and maintained according to instructions attached to or furnished with the product, Whirlpool Corporation or Whirlpool Canada LP (hereafter "Whirlpool") will pay for FSP[®] replacement parts and repair labor to correct defects in materials or workmanship. Service must be provided by a Whirlpool designated service company.

28. During the period 2002 through September 2006, Whirlpool issued a one-year full warranty on all components of the Whirlpool[®] Duet[®] and a lifetime limited warranty on the stainless steel wash drum. A true and correct copy of the written warranty issued with Duet[®] washers during the period 2002 through September 2006 is attached to this affidavit as Exhibit N. For several years that warranty stated in pertinent part:

ONE-YEAR FULL WARRANTY

For one year from the date of purchase, when this washer is operated and maintained according to instructions attached to or furnished with the product, Whirlpool Corporation will pay for FSP[®] replacement parts and repair labor to correct defects in materials or workmanship. Service must be provided by a Whirlpool designated service company.

...

LIFETIME LIMITED WARRANTY ON STAINLESS STEEL WASH DRUM

For the lifetime of the washer, when this washer is operated and maintained according to instructions attached to or furnished with the product, Whirlpool Corporation will pay for FSP[®] replacement parts for the Stainless Steel wash drum if defective in materials or workmanship.

After September 2006, Whirlpool's written warranty included only a one-year limited warranty on all parts of the Whirlpool[®] Duet[®] washer, and there was no lifetime limited warranty on the stainless steel wash drum. A true and correct copy of the written warranty issued with Duet[®] washers after September 2006 is attached as Exhibit O and states in pertinent part:

ONE YEAR LIMITED WARRANTY

For one year from the date of purchase, when this major appliance is operated and maintained according to instructions attached to or furnished with the product, Whirlpool Corporation or Whirlpool Canada LP (hereafter "Whirlpool") will pay for Factory Specified Parts and repair labor to correct defects in materials or workmanship. Service must be provided by a Whirlpool designated service

company. This limited warranty applies only when the major appliance is used in the country in which it was purchased.

29. Since the Whirlpool® Duet Sport® and Duet Sport HT® washing machines first launched in 2006, Whirlpool has issued only a one year limited warranty on all parts of the washer, and the written warranty has never included a lifetime limited warranty on the stainless steel wash drum. A true and correct copy of the written warranty issued with Duet Sport® and Duet Sport HT® washers is attached as Exhibit P and states in pertinent part:

ONE YEAR LIMITED WARRANTY

For one year from the date of purchase, when this major appliance is operated and maintained according to instructions attached to or furnished with the product, Whirlpool Corporation or Whirlpool Canada LP (hereafter “Whirlpool”) will pay for Factory Specified Parts and repair labor to correct defects in materials or workmanship. Service must be provided by a Whirlpool designated service company. This limited warranty applies only when the major appliance is used in the country in which it was purchased.

30. Whirlpool neither owns nor operates its own service division.³ Whirlpool pays independent service providers for service calls that are performed during Whirlpool’s written warranty period. As a result, Whirlpool generally receives service data only for in-warranty service calls by its independent service network. Whirlpool’s largest trade customer, Sears, however, owns and operates two nationwide service businesses (Sears and A&E Factory Service) that provide both in-warranty and out-of-warranty service to appliance owners. Thus, Sears receives and maintains both in-warranty and out-of-warranty service data for Sears and other retailers’ customers who have received service from Sears or A&E, including hundreds of thousands of Whirlpool Access and Horizon washer owners. Consequently, Sears’ customer and service databases provide a statistically reliable sample of Whirlpool Access and Horizon washer owners for whom Whirlpool can obtain a complete service history (*i.e.*, for both the in-warranty and out-of-warranty periods).

31. Whirlpool occasionally receives service data for out-of-warranty service calls by its independent service network, usually in connection with free out-of-warranty repairs that Whirlpool has provided to some customers as a customer-satisfaction measure or goodwill gesture, or in connection with a repair provided for free to a customer who bought from Whirlpool a service contract that provides for free service coverage after the expiration of the initial written warranty. These out-of-warranty service records represent only a small fraction of all service records received by Whirlpool.

32. Whirlpool maintains an SAS ONTRAC system (“ONTRAC”), which is the information system that Whirlpool uses to project service incident rates (“SIRs”) on Whirlpool-manufactured appliances. Whirlpool also maintains other information systems and databases that the company uses to track and improve service rates and product quality. Whirlpool’s SIR

³ Whirlpool owns a minority stake in A&E Factory Service, which is majority owned and operated by Sears.

metric, as projected by ONTRAC, specifically refers to the percentage obtained by dividing the number of warranty service claims run on appliances by the number of appliances manufactured during the reporting period. Whirlpool currently has “live” SIR data for Whirlpool Access washers manufactured in the years 2003, 2004, 2005, 2006, and 2007. The SIR data for Whirlpool Access washers manufactured in 2002 are archived and not readily accessible through ONTRAC. Whirlpool also has live SIR data for Whirlpool Horizon washers manufactured in 2006 and 2007. The warranty service data for washers manufactured in 2007 and 2008 will not mature until early 2009 and 2010, respectively, after all service claims from the first 12 months of those machines’ lives have been submitted by the service contractors to Whirlpool for payment.

33. In early June 2008, Whirlpool conducted key-word searches of the customer comments and service technician comments fields in Whirlpool’s service records for the Whirlpool Access and Horizon washers, respectively, to identify complaints that potentially were related to mold or mildew growth or odors in the washers. For purposes of this analysis, Whirlpool defined “service call” broadly to include all service calls that were run by the Whirlpool-authorized independent service network for any reason. The service records included in this analysis included all service calls to correct installation problems with the washing machines, all service calls to correct or repair damage to the washer that occurred during shipment or delivery, all service calls to instruct the customer as to the proper use and care of the washer, and all service calls to repair or replace one or more components of the washer due to a machine malfunction or for some other reason. To be overly inclusive in the searches for relevant records, the key words Whirlpool used for these searches were mold, odor, mildew, smell, rotten, egg, stink, musty, sour, foul, stale, sulphur, scum, and film. Further, Whirlpool did not excluded any records from its results, even though I am certain that the results returned by Whirlpool’s query include hundreds of service records that are not related to potential mold or mildew growth. For example, Whirlpool did not filter out any records where the customer’s or service technician’s comments described the smell or odor as a burning or smoky smell or odor.⁴ By performing the above key-word queries of Whirlpool’s service records, Whirlpool was able to identify only approximately 5,162 Whirlpool Access washers in the United States that reportedly have experienced any problem that potentially could have been related to mold or mildew growth in the washer. Whirlpool also was able to identify approximately 634 Whirlpool Horizon washers in the United States that reportedly have experienced any problem that potentially could have been related to mold or mildew growth in the washer. Because Whirlpool’s searches for relevant records were overly inclusive, I know that some fraction of these Access and Horizon washers did not actually experience a mold or mildew problem. To eliminate the irrelevant service records from Whirlpool’s estimates, however, I would have to read the individual customer comments and service technician comments in each of the thousands of service records to identify which records actually indicate a mold- or mildew-related problem. I did not have time to read all of these records to eliminate the irrelevant records. The results of Whirlpool’s mold-mildew analysis are summarized in Tables 1 and 2 below.

⁴ At least 508 Access washers had a smell or odor complaint that appeared to be related to burning or smoke, not mold-mildew. Similarly, at least 120 Horizon washers had complaint for smell or odor that appeared to be related to burning or smoke, not mold-mildew.

TABLE 1: WHIRLPOOL ACCESS WASHERS IN THE UNITED STATES THAT REPORTEDLY HAVE EXPERIENCED A POTENTIAL IN-WARRANTY MOLD OR MILDEW PROBLEM

Production Year	Whirlpool Access Washers Manufactured	Whirlpool Access Washers That Reportedly Experienced a Potential In-Warranty Mold or Mildew Problem	Whirlpool Access Washer In-Warranty Mold-Mildew Complaint Rate
2003	268,708	1,184	0.44%
2004	331,386	1,299	0.39%
2005	426,069	1,286	0.30%
2006	410,334	1,209	0.25%
2007	370,763	364	0.10%
2003-2007	1,807,260	5,162	0.29%

TABLE 2: WHIRLPOOL HORIZON WASHERS IN THE UNITED STATES THAT REPORTEDLY HAVE EXPERIENCED A POTENTIAL IN-WARRANTY MOLD OR MILDEW PROBLEM

Production Year	Whirlpool Horizon Washers Manufactured	Whirlpool Horizon Washers That Reportedly Experienced a Potential In-Warranty Mold or Mildew Problem	Whirlpool Horizon Washer In-Warranty Mold-Mildew Complaint Rate
2006	168,566	381	0.23%
2007	227,674	253	0.11%
2006-2007	396,240	634	0.16%

34. These results mean that less than 0.29% (5,162 / 1,807,260) of the Whirlpool Access washers manufactured by Whirlpool from 2003 through 2007 reportedly have experienced any in-warranty problem that potentially could have been related to mold or mildew growth. This also means that at least 99.71% of all Whirlpool Access washers have never experienced any in-warranty problem that potentially could have been related to mold or mildew. Further, the results show that less than 0.16% (634 / 396,240) of the Whirlpool Horizon washers manufactured by Whirlpool in 2006 and 2007 reportedly have experienced any in-warranty problem that potentially could have been related to mold or mildew growth. This also means that at least 99.84% of all Whirlpool Horizon washers manufactured in 2006 and 2007 have never experienced an in-warranty problem that potentially could have been related to mold or mildew.

35. After Whirlpool receives a warranty service claim, Whirlpool assigns to the claim “service codes” that identify the reasons for the service call. The service claims are assigned a “service responsibility” code that falls into one of the following broad categories: machine malfunction (*e.g.*, the service technician repairs or replaces a malfunctioning component); an installation problem or correction (*e.g.*, the machine was improperly leveled or hooked up to the customer’s water or electrical lines); customer instructs (*i.e.*, the service technician explains to the consumer the proper use and care of the machine but does not repair the machine); malfunctions – not repaired (*e.g.*, the customer declines the repair or replaces or returns the machine rather than having the machine serviced); and malfunction – damage, which refers primarily to service calls to correct damage done to the machine during the delivery process (*e.g.*, dings and dents in the refrigerator’s cabinet). The service claims also are assigned a “service component” code identifying the part(s) that prompted the service call, as well as a “service condition” code that identifies the specific symptom experienced by the customer or the particular problem with the component. In addition to the key-word searches described above, Whirlpool conducted queries to identify the SIRs for Whirlpool Access and Horizon washers’ stainless steel wash drums.

36. The following two tables reflect the SIRs for the Whirlpool Access and Horizon washers’ stainless steel wash drum, including all service calls attributable to machine malfunctions, installation corrections, customer instructs, malfunctions not repaired, and delivery damage. Because all of the Whirlpool Access washers sold through August 2005 were accompanied by a limited lifetime warranty on the stainless steel wash drum, and because all of the Whirlpool Duet® models sold through September 2006 were accompanied by a limited lifetime warranty on the stainless steel wash drum, the Whirlpool Access washer SIRs include up to five years of service history for the stainless steel drum.

TABLE 3: SERVICE INCIDENT RATES FOR WHIRLPOOL ACCESS WASHER STAINLESS STEEL WASH DRUMS

Production Year	Whirlpool Access Washers Manufactured	Whirlpool Access Washers With a Service Call Coded to the Stainless Steel Drum	Stainless Steel Drum SIR
2003	268,708	1,030	0.38%
2004	331,386	1,275	0.38%
2005	426,069	1,646	0.39%
2006	410,334	1,288	0.31%
2007	370,763	916	0.25%
2003-2007	1,807,260	6,155	0.34%

TABLE 4: SERVICE INCIDENT RATES FOR WHIRLPOOL HORIZON WASHER STAINLESS STEEL WASH DRUMS

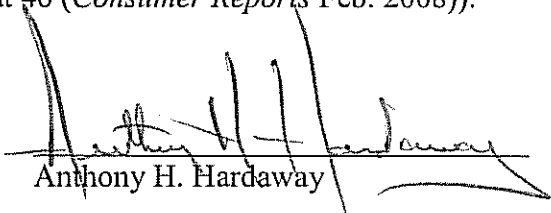
Production Year	Whirlpool Horizon Washers Manufactured	Whirlpool Horizon Washers With a Service Call Coded to the Stainless Steel Drum	Stainless Steel Drum SIR
2006	168,566	565	0.34%
2007	227,674	807	0.35%
2006-2007	396,240	1,372	0.35%

37. Whirlpool's SIR data show that only tiny fractions of Whirlpool Access and Horizon washers (.34% and .35%, respectively) have received any service call related to the stainless steel wash drum, and for the Access washers this includes some machines that are more than five years old.

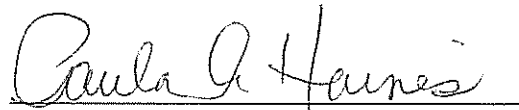
38. Although a good indicator of repair rates, the SIR metric, as projected or calculated by ONTRAC, typically overstates the actual rate of machine malfunctions in the field. Because the SIR includes repeated service calls on the same machine, which inflates the numerator in the SIR ratio, the SIR does not represent, and tends to be higher than, the percentage of machines that were serviced under warranty. For example, if a consumer received a service call to repair the stainless steel drum, and several months later the same consumer received a service call that was attributed to the same component, both service calls would be counted in the SIR.

39. Year after year for six years, from 2002 through 2007, *Consumer Reports* ranked the Whirlpool Access washers among the three best front-loading washers. (Ex. Q at 42 (*Consumer Reports* July 2002); Ex. R at 41 (*Consumer Reports* Aug. 2003); Ex. S at 37 (*Consumer Reports* June 2004); Ex. T at 44 (*Consumer Reports* Feb. 2005); Ex. U at 45 (*Consumer Reports* Mar. 2006); Ex. V at 44 (*Consumer Reports* June 2007).) In February 2008, *Consumer Reports* ranked the Whirlpool Access washer the third best front-loading washer among all front-loading washers. (Ex. Y at 46 (*Consumer Reports* Feb. 2008)).

Further affiant sayeth not.


Anthony H. Hardaway

Subscribed and sworn to before me this 19 day of August 2008.


Notary Public

